



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROTECTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 9, 2019. The tenant confirmed that he did not submit any documentary evidence. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, both parties confirmed that the actual landlord is C.H. as named in the signed tenancy agreement submitted. Both parties confirmed that the application named landlord, P.P.M. (a management company) was the landlord's agent. As such, both parties consented to the landlord's application being amended to reflect the properly named landlord as C.H.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2018 on a fixed term tenancy ending on October 31, 2019 as per the submitted copy of the signed tenancy agreement. Both parties confirmed the tenancy ended on October 31, 2019. The monthly rent was \$1,600.00 payable on the 1st day of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid.

The landlord seeks a monetary claim of \$952.50 which consists of:

\$157.50	Professional Carpet Cleaning
\$120.00	Cleaning
\$150.00	Lost Keys/Fobs
\$125.00	Painting
\$300.00	Damage Repairs, Walls/Flooring

The landlord claims that the tenant failed to have the rental unit professionally carpet cleaned at the end of tenancy as the carpet was found to have been stained in the bedroom with a "yellow stain". The tenant disputes the claim noting that at the start of the tenancy 4 stain marks were noted in the bedroom. Both parties confirmed that the condition inspection report for the move-in does note that there were 4 "darker spots on carpet" in the bedroom. The landlord referenced one submitted photograph of the entry way of the bedroom which the landlord has characterized as yellow discoloration. The landlord did not reference any other photographs of the carpeting in the bedroom for comparison. The landlord further stated that the amount was based on an estimate for professional carpet cleaning not yet done. The landlord stated that as a new tenant now resides in the unit the landlord has chosen not to have the carpets professionally cleaned.

The landlord seeks \$120.00 for general cleaning costs as the landlord claims that the rental unit was found with a dirty fridge, washer and dryer which required cleaning. The tenant disputes this claim but confirmed that the fridge did have rust stains that existed

when the tenancy began. The landlord made no references to any documentary evidence regarding photographs, invoices or receipts.

The landlord seeks a claim of \$150.00 for a lost key and fob. The tenant confirmed that he did lose a key and fob during the tenancy. The landlord has noted a \$150.00 amount for the replacement cost of a key and fob but has not provided any documentary evidence regarding the replacement costs. The landlord confirmed during the hearing that the key and fob have not yet been replaced as there is no current need for an additional key and fob.

The landlord also seeks compensation of \$300.00 for the cost of repairs to damaged walls and flooring. The landlord stated that at the end of tenancy scratches and stains were found in the flooring. The tenant confirmed that some scratches were new and caused by him during the tenancy, but some of the scratches were present at the start of the tenancy. The landlord stated that the \$300.00 amount was based upon a verbal estimate received from a contractor. The landlord did not make any references to any documentary evidence.

The landlord seeks \$125.00 for the cost of painting. The landlord claims that the tenant left numerous nail and screw holes in the walls. The landlord stated that he had a total count of 9 holes found in the walls. The tenant disputes the landlord's claims but confirmed that he did hang pictures on the walls using nails only. During the hearing the landlord confirmed that no expenses have been incurred for painting as the landlord has chosen not to re-paint the unit as there is a new tenant occupying the rental unit. The landlord did reference a few photographs which show holes in the walls which the landlord has referenced as "screw holes". I note that there is difference between some of the holes which I categorize as "nail holes" and 1 photograph of larger "screw holes". The tenant stated that no screws were used, but that there were holes in the bedroom walls at the start of the tenancy. The landlord was unable to provide any evidence of which photograph submitted was for which room.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I find on the landlord's claim for \$157.50 for an estimated cost for professional carpet cleaning by the landlord has failed. The landlord was unable to provide sufficient evidence that the "yellow stain" was not in fact one of the 4 "darker spots" in the carpet as claimed by the tenant. Both parties confirmed that there were 4 "darker spots" in the bedroom closet at the start of the tenancy, but the landlord was unable to provide any further evidence other than the 1 photograph of the bedroom entry way "yellow stain". I also note that the landlord has claimed a \$157.50 estimated cost for professional carpet cleaning yet did not incur this cost as the landlord has stated that a new tenant occupies the rental unit and has chosen not to have the carpets professionally cleaned. On this basis, I find that the landlord has failed to provide sufficient evidence to prove on a balance of probabilities that he "yellow stain" was a new mark on the bedroom closet as opposed to one of the original 4 "darker spots". This portion of the claim is dismissed.

I find that the landlord has failed to establish a claim for the \$120.00 amount for general cleaning. The landlord has claimed that the fridge, washer and dryer were left dirty requiring cleaning for a cost of \$120.00. The tenant has disputed this claim but had noted that there was a rust stain in the fridge. The landlord made no references to any supporting evidence in the form of any photographs of invoices/receipts. On this basis, I find that the landlord has failed to provide sufficient evidence that the fridge, washer and dryer were left dirty requiring cleaning for a cost of \$120.00. This portion of the landlord's claim is dismissed.

I find that the landlord has failed to establish a claim for the \$150.00 amount for a lost key and fob. Although the tenant did confirm that he did lose a key and fob during the tenancy the landlord was unable to provide any evidence as to the source of the replacement for the missing key and fob and the landlord did provide evidence that the key and fob will not be replaced as there is no current need to replace them. However, I do find based upon the testimony of the tenant that the landlord did suffer a loss. I find that the cost of fob replacements ranges from \$20-\$50. On this basis, I grant the landlord an arbitrary nominal award of \$35.00.

I find that the landlord has failed to establish a claim for the \$300.00 for repairs for damage to the walls. In this case, the landlord has confirmed that no repairs costing

\$300.00 was incurred. The tenant has disputed that although there were some new scratches in the floor, there were existing scratches in the floor at the start of the tenancy as per the condition inspection report for the move-in. The landlord has failed to provide any conclusive evidence that all the scratches noted were caused by the tenant. However, the tenant has confirmed in his direct testimony that he did cause some “new” scratches in the flooring. On this basis, I find based on the tenant’s testimony that the landlord did suffer a loss. On this basis, I grant an arbitrary nominal award of \$75.00.

I find that the landlord has failed to establish a claim for the \$125.00 amount for painting. In this case, the landlord has confirmed that no painting has taken place as a new tenant occupies the rental unit. The landlord stated that there were no plans to paint the unit until it was empty. The tenant has also disputed the landlord’s claim arguing that no screws were used, but instead only nails for pictures in the living room. The landlord has argued that the bigger screw holes caused more damage. The tenant has also claimed that there were existing holes in the bedroom at the start of the tenancy which is what he thinks the landlord is referring to. On this basis, I find that the landlord has failed to provide sufficient evidence of its claim that the tenant caused damage to the walls requiring painting.

The landlord has established a total monetary claim of \$110.00. The landlord having been partially successful is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain \$210.00 from the combined security and pet damage deposits of \$1,600.00 held by the landlord. I order that the landlord return the remaining balance of \$1,390.00.

Conclusion

The tenant is granted a monetary order for \$1,390.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 13, 2020